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NOTES AND MEMORANDA

THE DISSOLUTION OF THE POWDER TRUST

IN the May number of this journal appeared an article by the present writer on the Powder Trust. At the time the article went to press, the dissolution plan of that combination had not been agreed upon, altho dissolution had been acquiesced in by it. In consequence the history of the organization was carried only to the interlocutory decree of June, 1911.

On June 13, 1912 the opinion of the court and final decree were filed in the United States court for the district of Delaware. The suit as to fourteen of the corporations and two of the individual defendants was dismissed. The remaining twenty-seven¹ were enjoined and the combination ordered dissolved. The present note will endeavor to set forth briefly the plan devised, thus completing the history begun in the May number.²

By the terms of the decree, E. I. du Pont de Nemours and Company (1902, Delaware corporation),³ the Hazard Powder Company, Delaware Securities Company,⁴ Delaware

¹ Hazard and Lafin & Rand Powder Companies, Eastern Dynamite Company, Fairmount Powder Company, Judson Dynamite & Powder Company, Delaware Securities and Delaware Investment Companies, California Investment Company, E. I. du Pont de Nemours & Company of Pennsylvania, du Pont International Powder Company, E. I. du Pont de Nemours Powder Company, E. I. du Pont de Nemours & Company, Thomas Pierre, Alexis, Alfred, Eugene, Eugene E. Henry, Irene Francis and Victor du Pont, J. A. Haskell, A. J. Knoxham, H. M. Parksdale, E. G. Buckner and Frank Connable.

² For the facts and figures, see the text of the decision United States of America v. E. I. du Pont de Nemours and Company. In the district Court of the United States for the District of Delaware, Opinion of the Court and Decree.

³ Cf. Stevens, "The Powder Trust," Quarterly Journal of Economics, May, 1912, vol. xxvi, p. 470.

⁴ Ibid, p. 472.

Investment Company,¹ Eastern Dynamite Company,² California Investment Company, and the Judson Dynamite and Powder Company³ were ordered dissolved and their assets distributed among their respective stockholders. In addition to the E. I. du Pont de Nemours Powder Company (1903, Delaware corporation), two new corporations were provided for, with the alternative that the Laflin and Rand and Eastern Dynamite companies might be re-organized and utilized instead of two new corporations, or either of the former for either of the latter. In case the Laflin and Rand Company was not so utilized it was provided that it should be dissolved and should distribute its property to stockholders.

To the first of these two new corporations were assigned three plants for the manufacture of dynamite, one in New Jersey, one in Michigan, and one in California; seven plants for the manufacture of black blasting powder, two in Pennsylvania and one each in New York, Ohio, Wisconsin, Kansas, and California; and two plants for the manufacture of black sporting powder, one in Connecticut and one in New York. To the second corporation were allotted four plants for the manufacture of dynamite, one located in New Jersey, one in Michigan, one in Missouri, and one in California, and five for the manufacture of black blasting powder, two in Pennsylvania and one each in Tennessee, Illinois, and Kansas.

The above arrangement would leave to the third corporation, the E. I. du Pont de Nemours Powder Company, eight plants producing dynamite, one located in each of the states of Missouri, Wisconsin, Washington, Pennsylvania, Colorado, Indiana, New Jersey, and Alabama; seven plants manufacturing black blasting powder, one each in Colorado, Alabama, Pennsylvania, Iowa, W. Virginia, Oklahoma, and Minnesota; two plants for the manufacture of black sporting powder, one in Delaware and one in New Jersey; and

¹ *Ibid.*, p. 473.

² *Ibid.*, p. 463. If used in reorganization, however, the Eastern Dynamite Company was not to be dissolved. Cf. below.

³ Q. J. E., vol. xxvi, p. 476.

also two plants for the manufacture of government smokeless powder, both located in New Jersey.

It will be noted from the above enumeration that neither of the two new corporations were given plants for the manufacture of smokeless sporting or government smokeless powder. It was, therefore, decreed that the first of the new or reorganized corporations should have transferred or furnished to it at Kenville, New Jersey, or other suitable eastern point a plant with a capacity of 950,000 pounds of smokeless sporting powder per annum. And further, to this concern the brands owned by Laflin and Rand were ordered to be transferred. The situation in regard to government smokeless powder was left unchanged. This is explained in the Court's opinion:

"This is because a division of that business among several competing companies (there being only one customer) would tend to destroy the practical and scientific co-operation now pursued, between the Government and the defendant company just named, and to impair the certainty and efficiency of the results thus obtained." ¹

The interesting feature of this reorganization scheme is, of course, the method of handling the securities. In return for the transfer of the above enumerated properties the two new or reorganized concerns were to pay a valuation therefor based on the last inventory and including also a fair valuation for brands and good will, as follows:

Fifty per cent of the purchase price in ten year, six per cent non-cumulative bonds not secured by mortgage, "payable if earned by the company during said year, or to the extent thereof earned, but not otherwise." ²

Fifty per cent of the purchase price in the stock of the two corporations respectively, to be for the time being their total stock issues.

All the stock and one half of the bonds, or proceeds of the bonds, thus received, were ordered distributed among

¹ It should also be added that the Government by ownership and operation of its own plants is enabled to control the price it pays for powder.

² Callable at 102.

the stockholders of the E. I. du Pont de Nemours Powder Company. But in order to safeguard this distribution, the two new or reorganized corporations were each to provide two issues of stock, one with and the other without voting power. In the distribution of stocks to the stockholders of E. I. du Pont de Nemours Powder Company such stock as was to go to any one of the twenty-seven defendants was ordered to be allotted one half in the voting, and one half in the non-voting issues. It is to be noted, however, that upon transfer by death or by will to some person not one of the twenty-seven defendants, such person may exchange the non-voting for voting stock. The same right is also given to the vendee of the twenty-seven defendants, said vendee not being one of them or the wife or child of one of them.

The decree further provides that a fair proportion, so far as practicable, of the explosives business shall be transferred to the new corporations; that for five years they shall be entitled to free access to the records of the Trade Bureau of the trust, and also for the same period to such facilities as the E. I. du Pont de Nemours Powder Company possesses in reference to the purchase of material, experimentation, scientific research, and the like. Six months are allowed to put in force the terms of the decree; that is, until December 15, 1912.

The defendants are enjoined from continuing the combination: (1) By transferring either of the two new businesses to the E. I. du Pont de Nemours Powder Company or vice versa, or by placing the stocks of either in the hands of a voting trust. (2) By making any agreement or arrangement relative to prices or apportioning trade by either customers or localities. (3) By using local price cutting to eliminate competition,¹ except that prices may be lowered to meet or *compete with those of rival manufacturers*. (4) By retaining either the same clerical force or the same offices. (5) By operating bogus independents. All subsidiary con-

¹ It will be remembered that local price cutting was one of the leading weapons of the Trust Cf. op. cit., Q. J. E., vol. xxvi, pp. 449-450, 455-456, 458-460.

cerns using their names upon their products are required to use also a statement indicating their control.

The three corporations, stockholders, officers, and agents are further enjoined for five years as follows: (1) No one corporation shall have an officer or director who also holds such an office in either of the other corporations. (2) No one corporation shall have the same sales agent as another.¹ (3) None of the corporations shall acquire stock, factories, plants, brands, or business of any other.

It is further forbidden to the individual defendants to acquire within three years any stock or other interest in either of the new companies beyond the share allotted under the plan, altho they may acquire the interest of other defendants.² Finally the new companies are decreed and adjudged to be parties to the cause and bound by the provisions of the decree. The Court retains jurisdiction of the cause and orders that a report be made for its approval after the plan is effectuated.

The effect of this dissolution is difficult to predict. The distribution of plants in order to secure competition promises well. In the transfer of securities the theory has been apparently to divide the strong stock control of the du Ponts by returning half the purchase price of the plants transferred in an income bond. The du Pont interest after this process is again split in half by the distribution to the twenty-seven defendants of half their stock in a non-voting issue. Regarding this latter provision it is to be borne in mind that by sale to other than the defendants or their wives and children such non-voting stock becomes exchangeable for voting stock. This clause is pregnant with suggestions of dummy vendees. It is very questionable if the division into voting and non-voting stock as it stands gives any real safeguard. Had the court forbidden the exchange of the non-voting stock for voting stock for a period of five years or more this provision would have been more satisfactory.

¹ Except that they may sell through the same merchant or dealer.

² This last would not, of course, alter the proportion of the total interest held by the twenty-seven defendants.

As in the Tobacco dissolution, which contains the same clause, the provision against the acquisition for a period of three years by defendants of further interests in the new companies than those assigned, is open to serious criticism. The result after three years no one can foretell. It may be pointed out further that the clause forbidding local price cutting contains one exception that makes it of no value if by chance an independant manufacturer cuts the price first. As the clause now stands that act would apparently justify a price war.

In conclusion it may be said that the injunctions laid upon the defendants and the three corporations are very similar to those of the Tobacco Dissolution Plan and are to that extent subject to nearly all of the objections raised by Mr. Brandeis and Mr. Levy.

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